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*Kansas City So. R. Co.*, 143 La. 307, 78 So. 568; *Chafin v. Norfolk, etc., R. Co.*, 80 W. Va. 703, 93 S. E. 822; *Lusk v. Bandy* (Okla.), 184 Pac. 144.

Under the Virginia statute, the amount recovered should be distributed among the beneficiaries as directed by the jury, and if the jury fail to make such distribution, their failure shall be corrected by the trial court at any time before judgment is entered. Va. Code, 1919, § 5788. "The manner in which the damages are to be distributed is no concern of the defendant, and not under the control of the plaintiff." *Baltimore, etc., R. Co. v. Wightman*, 29 Gratt. (Va.) 441; *Norfolk, etc., R. Co. v. Stevens*, *supra*.

**FRAUD—REPRESENTATION INDUCING BAILMENT OF STOLEN GOODS.**—The defendant sent certain goods to the plaintiff, his friend, which he asked the plaintiff to keep for him. The defendant represented the goods as being his own, when in fact they had been stolen. The plaintiff, in ignorance of the theft, kept the goods for some days until the defendant removed them. Later the plaintiff was arrested and prosecuted criminally for theft and receiving stolen goods. He then brought an action for damages against the defendant. Held, the plaintiff may recover. *Habeeb v. Daas*, 181 N. Y. Supp. 392.

It is a settled rule of law that the novelty of an action is never reason for denying a plaintiff relief. *Kujek v. Goldman*, 150 N. Y. 176, 44 N. E. 773, 34 L. R. A. 156, 55 Am. St. Rep. 670.

The generally accepted rule is that fraudulent intent, either actual or constructive, is an essential element in an action for fraud. *Hodgkins v. Dunham*, 10 Cal. App. 690, 103 Pac. 351; *Potts v. Lambie*, 142 N. Y. Supp. 795; *Pridgen v. Long* (N. C.), 98 S. E. 451. However, a person is always held to have intended the reasonable consequences of his acts. Actual injury to the defrauded party need not have been intended, for an action to lie. *Coursey v. Morton*, 132 N. Y. 556, 30 N. E. 231; *Hilligas v. Kuns*, 86 Neb. 68, 124 N. W. 925. And in some States it is held that where a statement purporting to be true is false in fact and injury results therefrom, good faith in making such statement is no defense to an action for fraud. *McNair & Dodd v. Norfleet*, 113 Miss. 611, 74 So. 577; *Weinberg v. Ladd* (Mich.), 165 N. W. 711.

Misrepresentation or deceit which does not cause loss or inflict injury upon the plaintiff is not fraud in a legal sense, and no action thereon will lie. *Desmaris v. People's Gaslight Co.* (N. H.), 107 Atl. 491; *Parks v. Smith* (Ore.), 186 Pac. 552. But fraud need not be the sole cause of loss or injury if it is an essential cause. See *Deyo v. Hudson*, 225 N. Y. 602, 122 N. E. 635. Where a misrepresentation is made without fraudulent intent, and the party responsible offers to correct it so that no damage will result, he is not liable for damages in an action for fraud. *Hawkins v. Edwards*, 117 Va. 311, 84 S. E. 654.

For what constitutes false representation, see 4 VA. LAW REV. 677. For measure of damages in actions for fraud, see 1 VA. LAW REV. 163.

**MALICIOUS PROSECUTION—PROBABLE CAUSE—ADVICE OF COUNSEL.**—Defendant's agent and store manager was informed by trusted employees that

some braid had been stolen and that the plaintiff, an utter stranger to all there, was the thief, as two packages of braid were taken from under her arm and five other packages found nearby. When the plaintiff attempted to leave the store, defendant's agent had her arrested and prosecuted criminally, on advice of counsel and in good faith, but the plaintiff was found innocent and brought this action for malicious prosecution. *Held*, the action is dismissed. *Woolworth v. Connors* (Tenn.), 222 S. W. 1053.

The finding of probable cause in an action for malicious prosecution is a bar to the suit, as the law disfavors such an action for reasons of the public good in bringing to justice the real criminals. Probable cause does not turn upon the actual guilt or innocence of the accused. It is the existence of such facts and circumstances as would excite in a reasonable man a belief that on the facts within his knowledge the person so charged is guilty of the crime for which he is prosecuted. *Claiborne v. Chesapeake, etc., R. Co.*, 46 W. Va. 363, 33 S. E. 262.

The defense of acting upon the advice of counsel in good faith is universally held to be effective and it is very generally and logically considered as constituting the element of probable cause. *Schippel v. Norton*, 38 Kan. 567, 16 Pac. 804 and note; COOLEY, TORTS, 2nd ed., p. 212. But the courts vary as to just what information must be given to counsel to act upon, and how diligent the defendant was in getting it. See Note, 6 VA. LAW REG. (N. S.) 273. The most lax rule is that if the defendant disclose to counsel all the facts within his knowledge pertaining to the case, yet possibly omitting pertinent facts he might have obtained by reasonable diligence, his defense of advice of counsel is available. *King v. Apple River Power Co.*, 131 Wis. 575, 111 N. W. 668; *Hess v. Oregon German Baking Co.*, 31 Ore. 503, 49 Pac. 803. On the other hand, there is a more stringent rule in other courts, which insists not only that the defendant disclose to counsel all the facts within his knowledge, but that he must have been diligent and faithful in ascertaining these facts. *Atchison, etc., R. Co. v. Brown*, 57 Kan. 785, 48 Pac. 31.

Both of the preceding rules seem to fail to grasp the real spirit of our laws on this subject. The first gives too big a loophole for escape, and the second endeavors to make each prosecutor qualify as a prosecuting attorney.

However, there is a rule that occupies the middle ground. It insists that good faith be used, and that upon a reasonably careful investigation a full and fair statement be made to counsel of all known material facts, and if he has reasonable grounds to believe that further material facts exist, that he shall investigate further or inform his counsel of it. *Johnson v. Miller*, 69 Iowa 562, 29 N. W. 743, 58 Am. Rep. 231. For the instruction in Virginia on this last point, see *Evans v. Atlantic, etc., R. Co.*, 105 Va. 72, 53 S. E. 3; *Commander v. Provident Relief Ass'n* (Va.), 102 S. E. 89.

Some courts hold that advice of counsel as a defense in malicious prosecution only goes to help negative malice. *Vinol v. Core*, 18 W. Va. 1. But logically it should constitute a complete defense as showing probable cause, and so it is generally held. *Donnelly v. Doggett*, 145 Mass. 314, 14 N. E. 161; *Topolewski v. Plankinton Packing Co.*, 143 Wis. 52, 126 N. W. 554.